



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017) (Implements RCW 34.05.310)

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FILED

DATE: June 12, 2019

TIME: 7:25 AM

WSR 19-13-030

Agency: Department of Ecology AO # 19-01

Subject of possible rule making: The Department of Ecology is beginning a rulemaking to amend Chapter 173-201A WAC, Water Quality Standards for Surface Waters of the State of Washington. Ecology is considering adopting one or more variances to the water quality standards that meet the requirements of WAC 173-201A-420 (Variance section), for polychlorinated biphenyls (PCBs) for the Spokane River, in water resource inventory area (WRIA) 57.

Ecology will consider amending sections of Chapter 173-201A WAC that address variances to the standards, including amendments to 173-201A-420 (Variance) and 173-201A-602 (Table 602 – Use designations for fresh waters by water resource inventory area), as well as any other sections that need to be amended to support adopting the above-noted variances.

Statutes authorizing the agency to adopt rules on this subject: RCW 90.48.035 provides clear and direct authority to Ecology to revise the Surface Water Quality Standards (SWQS).

Reasons why rules on this subject may be needed and what they might accomplish: WAC 173-201A-420 provides the pathway to establish a variance, which is described as a discharger-specific or waterbody-wide approach that maintains the ultimate goal of reaching the water quality standard or the highest attainable condition in the river, but achieves it in a step-by-step process over a longer period of time. Ecology must receive adequate information from interested parties (application) that meets WAC 173-201A-420(3) before moving forward with rulemaking.

Ecology is taking this rulemaking action in response to receiving completed applications from five National Pollutant Discharge Elimination System (NPDES) permitted dischargers to the Spokane River in April 2019:

- Liberty Lake Sewer and Water District - Water Reclamation Facility (Liberty Lake)
- Kaiser Aluminum Washington LLC – Trentwood (Kaiser)
- Inland Empire Paper Company (IEP)
- Spokane County Regional Water Reclamation Facility
- City of Spokane – Riverside Park Water Reclamation Facility

Ecology has administratively extended these five NPDES permits beyond their original expiration date. The dischargers are seeking variances because of concerns that they will be unable to meet future permit limits for PCBs. This is the first time Ecology has received formal requests for variances. These requests are part of the larger community efforts happening on the Spokane River watershed to address PCB pollution in the Spokane River.

Ecology will consider the information provided in the variance applications, as well as additional input that may be provided through the rulemaking process, to develop the variances and determine whether it is appropriate to adopt them into the standards.

In developing the variances, Ecology would establish a time-limited interim standard in each variance that would be used to set discharge effluent limits, allowing NPDES permitted dischargers to meet their numeric permit limits. Additionally, the variances would require implementation of pollutant minimization plans to continually reduce sources of PCB pollution to the Spokane River. The variance pathway requires mandatory reviews of the progress, and requires adaptive management to meet the goals of the variance. Ecology will evaluate the progress of meeting the variance goals at each permit reissuance cycle (every five years).

A new federal regulation, establishing variances as a tool for meeting water quality standards, was published in August 2015 at 40 CFR 131.14. Additionally, Ecology adopted revised state regulations for variances in August 2016. Together, these regulations provide the process for dischargers to apply for, and Ecology to consider, adopting a variance through the rulemaking process. As with any proposed rule change, a variance might or might not be formally adopted, depending on the outcome of the rule adoption process.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: We will work with the federal Environmental Protection Agency (EPA) to ensure that the adopted water quality standards meet Clean Water Act approval. We will work with the Spokane Tribe and other tribes who have interest and/or proximity to the Spokane River. We will work with other state agencies who have a role or interest in implementing the adopted water quality standard, including Washington Department of Fish and Wildlife, Washington Department of Health, and Washington Department of Agriculture. We will also work with Spokane city and county governments, and entities noted above, to discuss, and seek input on, rulemaking language development.


Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Ecology will follow the standard process for the adoption of rules under the Administrative Procedure Act (Chapter 34.05 RCW).

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

<p>(If necessary)</p> <p>Name: Susan Braley (Rule writer) Address: Department of Ecology Water Quality Program PO Box 47600 Olympia, WA 98504</p> <p>Phone: 360-407-6414 Fax: N/A TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711. Email: swqs@ecy.wa.gov Web site: https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC173-201A-variances Other: Sign up to receive email notices: http://listserv.ecology.wa.gov/scripts/wa-ECOLOGY.exe?SUBED1=ECOLOGY-WATER-QUALITY-INFO&A=1</p>	<p>Name: Cheryl Niemi (technical lead) Address: Department of Ecology Water Quality Program PO Box 47600 Olympia, WA 98504</p> <p>Phone: 360-407-6440 Fax: N/A TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711 Email: swqs@ecy.wa.gov Web site: https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC173-201A-variances Other: N/A</p>
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Additional comments: Interested parties can stay informed about the rulemaking and public involvement opportunities as described above. Ecology will extend an offer for government-to-government consultation with tribal governments during each phase of rule development.

Date: June 12, 2019	Signature: 
Name: Heather R. Bartlett	
Title: Water Quality Program Manager	